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60,137-207; 136-3032-U

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eugene A. Helmetsie  
Serial Number: 10/774,339  
Filed: February 6, 2004  
Group Art Unit: 3751  
Examiner: Le, Huyen D  
Title: Configurable Modular Shower Surround Features

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

REPLY BRIEF

Dear Sir:

The following remarks are in reply to the Examiner's Answer dated 15 November 2007. The Appeal Brief fee has already been paid. Any additional fee or credit may be charged to Deposit Account No. 50-1482 in the name of Carlson, Gaskey & Olds.

Remarks

Respectfully, the Examiner's Answer raises numerous arguments which require some brief response as follows:

Regarding claim 24, Appellant notes that the dependency should apparently be from claim 21 rather than claim 19, as evidenced by the antecedent basis for the elements in claim 24 that appear in claim 21 and not in claim 19. With this in mind, the "single, continuous piece" recited in claim 24 is in reference to the corner portion, not the walls and base portions as the Examiner suggests. Therefore, Appellant maintains that elements 8 and 9 of Armstrong are separate pieces that do not meet the limitation of being a single, continuous piece.

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Regarding claims 14 and 15, the rejection failed to consider these claims. Appellant brought this to the Examiner's attention in the response filed February 20, 2007 and again in the Appeal Brief. It is only at this late stage that the Examiner has provided any substance for rejecting claims 14 and 15. In all fairness, the Examiner should reopen prosecution so that Appellant has a full and fair opportunity to respond.

Regarding the rejection under §103(a) using the combination of Kitamura and Randal, the Examiner argues that the complexity of one equivalent device would not deter one of ordinary skill form using that equivalent device. The Examiner appears to be maintaining the rejection based upon conclusory grounds. As described for example in the Background of the present application, a desirable feature of shower surrounds is that they are uncomplicated to assemble. Thus, one of ordinary skill in the art would apparently take the complexity of a device into consideration when making a substitution. Therefore, as Appellant argued in its brief, one of ordinary skill in the art, knowing that a simple assembly of a shower surround is a desirable feature, would not substitute the more complex bracket of Randal for the pins of Kitamura.

Additionally, regarding the "blind openings that extend into said corner portion" of claim 18, the Examiner argues that even though the screws used to secure the brackets would penetrate through the wall and provide a water leakage path, hardly any water would slip through because the screws are hidden in a cavity of the bracket. Whether the screws are hidden does not necessarily equate to water containment. Water typically can flow through very tight spaces. Thus, the hole for the screw for the bracket would provide a possible water leakage path that would deter one from using the bracket (which is not even directed to shower shelving) in the shower surround of Kitamura. Further, the amount of water that leaks is immaterial. Even a small amount of water could have detrimental effects, such as causing mold behind the wall.

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CLOSING

For all of the reasons set forth above, and the reasons set forth in Appellant's Appeal Brief, the rejection of the claims is improper and should be reversed.

Respectfully submitted,

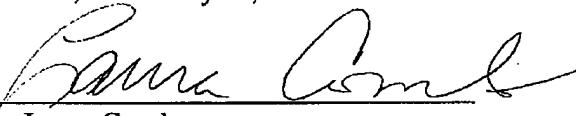


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CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States patent and Trademark Office, fax number (571) 273-8300, on January 15, 2008



Laura Combs